



Doncaster Council

Date: 29th July 2021

To the Chair and Members of the
AUDIT COMMITTEE

COVERT SURVEILLANCE - REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) UPDATE

EXECUTIVE SUMMARY

- 1.1 The Council occasionally has a need to utilise covert methods in the investigation of matters for the purposes of detecting and preventing particular crimes. For several years, this power has been utilised by trading standards in the use of covert recordings for test purchases of illicit and counterfeit products such as alcohol, tobacco and branded goods, or for underage sales. The recording negates the need for a child witness to attend court or enables evidence for a dispute over the sale. On such occasions, the Regulation of Investigatory Powers Act 2000 (RIPA) provides a mechanism to make it lawful for public authorities to use directed (i.e. covert) surveillance and covert human intelligence sources ("CHIS") e.g. undercover officers and informants. The Council has a RIPA Policy and Procedures that govern the use of those powers. In addition, the Home Office issues statutory codes of practice on the use of RIPA powers that must be complied with, including requiring elected members to have oversight of the use of RIPA powers and to agree the RIPA Policy/Procedures on an annual basis.
- 1.2 At its meeting held on 27th July 2010, the Audit Committee agreed it should receive reports reviewing the Council's use of RIPA. These reports are brought on a six monthly basis due to the Council's limited use of the RIPA powers. A yearly report and a six monthly update report are brought each year; this is the Yearly report.

RECOMMENDATIONS

2. To note that the Council has had no surveillance application authorised under RIPA since the last report to the Audit Committee on the 30th January 2021 and on that occasion there had also been no surveillance authorised.
3. To note that online training presented by legal was made to 8 environmental /community officers on 9th June 2021. Prior to this we have completed 5 training sessions with relevant Enforcement Officers covering 75 staff in 2019/2020. The online training module is available to all staff and members.
4. To note that there are no changes proposed to the Council's RIPA policy and procedure. The last minor amendments were approved by the Committee in June 2019 following the Investigatory Powers Commissioner's Inspection recommendations.

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

5. RIPA policies and procedures ensure that the Council has appropriate arrangements in place to comply with the law relating to RIPA authorisations and Covert Surveillance and that it is properly and lawfully carrying out covert surveillance where it is required.

BACKGROUND

6. RIPA was introduced in response to The Human Rights Act 1998 to ensure that Local Authorities could continue lawfully to carry out Covert Surveillance. The Government also set up the Office of Surveillance Commissioners who regularly inspects Local Authorities. The Office of Surveillance Commissioners has now become part of the Investigatory Powers Commissioner's Office ("IPCO"). The Council has been subjected to six inspections namely in, 2003, 2004, 2009, 2012, 2016 and March 2019.
7. The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 came into force on 1st November 2012. This provides that directed surveillance can only be authorised under RIPA where the criminal offence sought to be prevented or detected is punishable by a maximum of at least 6 months imprisonment or would constitute an offence involving sale of tobacco or alcohol to underage children.
8. The Protection of Freedoms Act 2012 also requires Local Authorities to have all their RIPA surveillance authorisations (both directed and Covert Human Intelligence Sources (CHIS)) approved by a Magistrate before they take effect.
9. Trading Standards regularly use directed surveillance for the purpose of their investigations, particularly to undertake test purchasing and subsequent monitoring of suspects and premises to determine methods of sale and supply, frequency of supply, and identity of associates, gathering evidence for enforcement action. The last authorisation that was applied for and granted, was in March 2020. The Trading Standards Service is one of the services who were authorised to enforce the Covid 19 restrictions and to this end all officers were given authorised status. The service had to adapt to an ever changing legislative framework in these unprecedented times. This has meant over the pandemic period the service has had to allocate its staff to this work and away from other work streams which has seen a dramatic fall in the number of RIPA applications being processed. As restrictions are lifted the Trading Standards Service are able to start to allocate staff back to their normal priority areas of work and this will likely lead to a corresponding increase in directed surveillance activity that will need the appropriate RIPA authorisations to be in place.

OPTIONS CONSIDERED

10. There are no alternatives considered.

REASONS FOR RECOMMENDED OPTION

11. The update assists in ensuring that the Council has fit for purpose arrangements in place to comply with the law relating to RIPA authorisations, and ensure that it only makes use of those powers where it is necessary and proportionate to do so.

IMPACT ON THE COUNCIL'S KEY OUTCOMES

12.

	Outcomes	Implications
	Working with our partners we will provide strong leadership and governance.	The work undertaken by the Audit Committee helps to ensure that the systems for RIPA powers used by the Council are overseen ensuring good governance arrangements and compliance with the law and statutory codes of practice.

RISKS AND ASSUMPTIONS

13. Failing to have a fit for purpose RIPA Policy and Procedures compliant with statutory codes of practice will put the Council at risk of acting unlawfully, having evidence ruled inadmissible in prosecution proceedings, facing complaints to the Investigatory Powers Tribunal and receiving criticism at the next inspection by IPCO. This will cause reputational damage to the organisation

LEGAL IMPLICATIONS [Officer Initials NC Date:]

14. RIPA provides Local Authorities with the mechanism in which they can carry out covert surveillance without breaching individuals' human rights under Article 8 of the Human Rights Act 2000. Failure to follow the law and statutory codes of practice in particular cases could lead to them being the subject of a challenge in court proceedings where RIPA powers were relied upon and also would lead to criticism at the next inspection by the Commissioner's Office.

The Covert Surveillance and Covert Human Intelligence Source Codes of Practice provide that elected members should consider internal reports on use of RIPA on a regular basis to ensure that it is being used consistently with the local authority's policy and that the policy remains fit for purpose.

FINANCIAL IMPLICATIONS [Officer PH 25/06/2021]

15. There are no specific implications associated with this report. Any costs to implement the amendments and training will be met from existing budgets.

HUMAN RESOURCES IMPLICATIONS [Officer Initials RH Date 27/6/21]

16. There are no specific HR implications associated with this report.

TECHNOLOGY IMPLICATIONS [Officer Initials... PW Date 29/06/21]

17. There are no technology implications associated with this report.

HEALTH IMPLICATIONS [Officer Initials RS Date 25/06/2021]

18. Public Health is in support of this recommendation in order to prevent and / or detect crime and prevent disorder. This recommendation is in the interests of public safety and protection of the health or the public.

EQUALITY IMPLICATIONS [Officer Initials NC Date 30/6/21.]

19. Decision makers must consider the Council's duties under the Public Sector Equality Duty at s149 of the Equality Act 2010. The duty requires the Council, when exercising its functions, to have 'Due Regard' to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the act, and to advance equality of opportunity and foster good relations between those who share a 'protected characteristic' and those who do not share that protected characteristic. There are no specific equality implications arising directly from this report.

GLOSSARY OF ACRONYMS AND ABBREVIATIONS

RIPA: Regulation of Investigatory Powers Act 2000

CHIS: Covert Human Intelligence Source

IPCO: Investigatory Powers Commissioner's Office

REPORT AUTHOR & CONTRIBUTORS

Helen Potts

Principal Legal Officer

01302 734631 helen.potts@doncaster.gov.uk

Scott Fawcus
Assistant Director